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 U.S. DISTRICT COURT
 N.D. OF CALIFORNIA
 SAN FRANCISCO DIVISION
 09/06/2009
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CV 09 35937

1 Nicholas J. Bontrager, Esq. (SBN 252114)
 Krohn & Moss, Ltd.
 2 10474 Santa Monica Blvd., Suite 401
 Los Angeles, CA 90025
 3 T: (323) 988-2400; F: (866) 802-0021
 nbontrager@consumerlawcenter.com
 4 Attorneys for Plaintiff,
 MICHAEL SIRBU

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UNITED STATES DISTRICT COURT,
 NORTHERN DISTRICT OF CALIFORNIA,
 SAN FRANCISCO DIVISION

8 MICHAEL SIRBU, 9 Plaintiff, 10 v. 11 VALENTINE & KEBARTAS, INC.,) Case No.:)) COMPLAINT AND DEMAND FOR) JURY TRIAL) (Unlawful Debt Collection Practices))) 12 Defendant.
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VERIFIED COMPLAINT

15 MICHAEL SIRBU (Plaintiff), by his attorneys, KROHN & MOSS, LTD., alleges the
 16 following against VALENTINE & KEBARTAS, INC. (Defendant):

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INTRODUCTION

- 18 1. Count I of Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, 15
 19 U.S.C. 1692 et seq. (FDCPA).
- 20 2. Count II of the Plaintiff's Complaint is based on Rosenthal Fair Debt Collection
 21 Practices Act, *Cal. Civ. Code §1788 et seq.* (RFDCPA).
- 22 3. Defendant acted through its agents, employees, officers, members, directors, heirs,
 23 successors, assigns, principals, trustees, sureties, subrogees, representatives, insurers,
 24 and attorneys.

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JURISDICTION AND VENUE

4. Jurisdiction of this court arises pursuant to *15 U.S.C. 1692k(d)*, which states that such actions may be brought and heard before “any appropriate United States district court without regard to the amount in controversy,” and *28 U.S.C. 1367* grants this court supplemental jurisdiction over the state claims contained therein.
 5. Defendant conducts business in the state of California, and therefore, personal jurisdiction is established.
 6. Venue is proper pursuant to *28 U.S.C. 1391(b)(2)*.
 7. Declaratory relief is available pursuant to *28 U.S.C. 2201 and 2202*.

PARTIES

8. Plaintiff is a natural person residing in Ross, Marin County, California.
 9. Plaintiff is a consumer as that term is defined by *15 U.S.C. 1692a(3)*, and according to Defendant, Plaintiff allegedly owes a debt as that term is defined by *15 U.S.C. 1692a(5)* and *Cal. Civ. Code § 1788.2(h)*.
 10. Defendant is a debt collector as that term is defined by *15 U.S.C. 1692a(6)* and *Cal. Civ. Code §1788.2(c)*, and sought to collect a consumer debt from Plaintiff.

FACTUAL ALLEGATIONS

12. Defendant constantly and continuously placed collection calls to Plaintiff seeking and demanding payment for an alleged debt.
 13. Defendant constantly and continuously places multiple collection calls in a single day to (415) 251-3435 and (310) 967-9830.
 14. Defendant calls Plaintiff and hangs up the phone before Plaintiff or his answering machine can answer the phone.
 15. Defendant calls and leaves messages that fail to inform Plaintiff of the name of the caller

1 or the company for which the caller is calling from. (See Exhibit A).

2 16. Defendant places collection calls to Plaintiff and leaves messages that fail to inform
3 Plaintiff that the call is coming from a debt collector. (See Exhibit A).

4 **COUNT I**

5 **DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES ACT**

6 17. Defendant violated the FDCPA based on the following:

- 7 a. Defendant violated §1692d of the FDCPA by engaging in conduct of which the
natural result is the abuse and harassment of the Plaintiff.
- 8 b. Defendant violated §1692d(5) of the FDCPA by causing a telephone to ring
repeatedly and continuously with the intent to annoy, abuse, and harass Plaintiff.
- 9 c. Defendant violated §1692d(6) of the FDCPA by placing calls to Plaintiff and
failing to provide meaningful disclosure of the caller's identity by either calling
and hanging up or by leaving messages which do not identify the Defendant or
the calling agent.
- 10 d. Defendant violated §1692e(10) of the FDCPA by engaging in the false and
deceptive practices of placing calls to Plaintiff without informing him that the
calls are coming from a debt collector.
- 11 e. Defendant violated §1692e(11) of the FDCPA by failing to disclose in
subsequent communications that the communication is from a debt collector.

12 18. As a direct and proximate result of one or more or all of the statutory violations above
Plaintiff has suffered emotional distress (see Exhibit B).

13 WHEREFORE, Plaintiff, MICHAEL SIRBU, respectfully requests judgment be entered
against Defendant, VALENTINE & KEBARTAS, INC., for the following:

14 19. Declaratory judgment that Defendant's conduct violated the Fair Debt Collection
Practices Act,

15 20. Statutory damages pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. 1692k,

21. Actual damages,
22. Costs and reasonable attorneys' fees pursuant to the Fair Debt Collection Practices Act,
15 U.S.C. 1692k
23. Any other relief that this Honorable Court deems appropriate.

COUNT II

**DEFENDANT VIOLATED THE ROSENTHAL FAIR DEBT COLLECTION
PRACTICES ACT**

24. Plaintiff repeats and realleges all of the allegations in Count I of Plaintiff's Complaint as the allegations in Count II of Plaintiff's Complaint.

25. Defendant violated the RFDCPA based on the following:

- a. Defendant violated §1788.11(b) of the RFDCPA by placing calls to Plaintiff and failing to provide meaningful disclosure of the caller's identity by either calling and hanging up or by leaving messages which do not identify the Defendant or the calling agent.
 - b. Defendant violated §1788.11(d) of the RFDCPA by causing Plaintiff's telephone to ring repeatedly and continuously so as to annoy Plaintiff.
 - c. Defendant violated §1788.11(e) of the RFDCPA by placing collection calls to Plaintiff with such frequency that was unreasonable and constituted harassment.
 - d. Defendant violated the §1788.17 of the RFDCPA by continuously failing to comply with the statutory regulations contained within the FDCPA, 15 U.S.C. § 1692 et seq.

26. As a direct and proximate result of one or more or all of the statutory violations above Plaintiff has suffered emotional distress (see Exhibit B).

1 WHEREFORE, Plaintiff, MICHAEL SIRBU, respectfully requests judgment be entered
2 against Defendant, VALENTINE & KEBARTAS, INC., for the following:

- 3 27. Declaratory judgment that Defendant's conduct violated the Rosenthal Fair Debt
4 Collection Practices Act,
5 28. Statutory damages pursuant to the Rosenthal Fair Debt Collection Practices Act, *Cal.*
6 *Civ. Code §1788.30(b)*,
7 29. Actual damages,
8 30. Costs and reasonable attorneys' fees pursuant to the Rosenthal Fair Debt Collection
9 Practices Act, *Cal. Civ Code § 1788.30(c)*, and
10 31. Any other relief that this Honorable Court deems appropriate.

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12 **DEMAND FOR JURY TRIAL**

13 PLEASE TAKE NOTICE that Plaintiff, MICHAEL SIRBU, demands a jury trial in this
14 cause of action.

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17 DATED: July 30, 2009

RESPECTFULLY SUBMITTED,

KROHN & MOSS, LTD

By: 

Nicholas J. Bontrager
Attorney for Plaintiff

1 **VERIFICATION OF COMPLAINT AND CERTIFICATION**

2 STATE OF CALIFORNIA

3 Plaintiff, MICHAEL SIRBU, states as follows:

- 4 1. I am the Plaintiff in this civil proceeding.
- 5 2. I have read the above-entitled civil Complaint prepared by my attorneys and I believe
6 that all of the facts contained in it are true, to the best of my knowledge, information
7 and belief formed after reasonable inquiry.
- 8 3. I believe that this civil Complaint is well grounded in fact and warranted by existing
9 law or by a good faith argument for the extension, modification or reversal of existing
10 law.
- 11 4. I believe that this civil Complaint is not interposed for any improper purpose, such as
12 to harass any Defendant(s), cause unnecessary delay to any Defendant(s), or create a
13 needless increase in the cost of litigation to any Defendant(s), named in the
14 Complaint.
- 15 5. I have filed this Complaint in good faith and solely for the purposes set forth in it.
- 16 6. Each and every exhibit I have provided to my attorneys which has been attached to
17 this Complaint is a true and correct copy of the original.
- 18 7. Except for clearly indicated redactions made by my attorneys where appropriate, I
19 have not altered, changed, modified or fabricated these exhibits, except that some of
20 the attached exhibits may contain some of my own handwritten notations.

21 Pursuant to 28 U.S.C. § 1746(2), I, MICHAEL SIRBU, hereby declare (or certify,
22 verify or state) under penalty of perjury that the foregoing is true and correct.

23 DATE: 7/25/2009



MICHAEL SIRBU

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EXHIBIT A

Hello, this is a very important message for Michael Sirbu. This is not a sales or marketing phone call. Press the 9 key now or call us back at 800-731-7766. Thank you.

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EXHIBIT B

I have suffered from the following due to, or made worse by, the actions of the Defendant's debt collection activities:

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|---|--------------------------------------|----|
| 1. Sleeplessness | <input checked="" type="radio"/> YES | NO |
| 2. Fear of answering the telephone | <input checked="" type="radio"/> YES | NO |
| 3. Nervousness | <input checked="" type="radio"/> YES | NO |
| 4. Fear of answering the door | <input checked="" type="radio"/> YES | NO |
| 5. Embarrassment when speaking with family or friends | <input checked="" type="radio"/> YES | NO |
| 6. Depressions (sad, anxious, or "empty" moods) | <input checked="" type="radio"/> YES | NO |
| 7. Chest pains | <input checked="" type="radio"/> YES | NO |
| 8. Feelings of hopelessness, pessimism | <input checked="" type="radio"/> YES | NO |
| 9. Feelings of guilt, worthlessness, helplessness | <input checked="" type="radio"/> YES | NO |
| 10. Appetite and/or weight loss or overeating and weight gain | <input checked="" type="radio"/> YES | NO |
| 11. Thoughts of death, suicide or suicide attempts | <input checked="" type="radio"/> YES | NO |
| 12. Restlessness or irritability | <input checked="" type="radio"/> YES | NO |
| 13. Headache, nausea, chronic pain or fatigue | <input checked="" type="radio"/> YES | NO |
| 14. Negative impact on my job | <input checked="" type="radio"/> YES | NO |
| 15. Negative impact on my relationships | <input checked="" type="radio"/> YES | NO |

Other physical or emotional symptoms you believe are associated with abusive debt collection activities: 20lb documented weight loss -

CARET OF chronic Insomnia - I Prescribed Ambien
NOT WANTING TO ANSWER Phone - MISSING
IMPORTANT phone CALLS causinG and
CONTRIBUTINg TO OVERPOWERING PESSIMISM -

Pursuant to 28 U.S.C. § 1746(2), I hereby declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct.

Dated: 7/25/2009

7/22/09

Signed Name

Michael Sirbu

Printed Name